

Chapter 3.28

UNIFORM TRANSIENT OCCUPANCY TAX

(1068-7/64, 1226-7/66, 1590-8/70, 2015-11/75, 2098-9/76, Resolution No. 5859-5/88, 2974-12/88, 3558-7/02, 3559-7/02, 3751-11/06, 3841-11/09)

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3.28.010 Purpose. The City Council of the city of Huntington Beach hereby declares that this chapter, which shall be known as the Uniform Transient Occupancy Tax, is adopted to provide a tax on the rent charged in a hotel by the operator of said hotel. (1068-7/64, 2015-11/75)

3.28.020 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

- (a) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- (b) "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.
- (c) "Occupancy" means the use or possession or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.
- (d) "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.
- (e) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise,

including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

- (f) "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both. (1068-7/64)

3.28.030 Tax imposed. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax on the rent charged by the operator at a rate equal to the current, combined state and local use tax rate. Said rate shall be declared by the City Council by resolution from time to time. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the City Treasurer may require that such tax be paid directly to the City Treasurer.

(1068-7/64, 1590-8/70, 2015-11/75, Res 5859-5/88)

3.28.040 Exemptions. No tax shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which it is beyond the power of the city to impose the tax herein provided;
- (b) Any federal or state of California officer or employee when on official business;
- (c) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the City Treasurer. (1068-7/64, 2015-11/75)

3.28.050 Operator's duties. Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided. (1068-7/64, 2015-11/75)

3.28.060 Register. Every owner, keeper or proprietor of any lodging house, rooming house, motel or hotel shall keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names upon their procuring lodging of a room or accommodations. Said register shall also show the day of the month and year when said name was inscribed, and the room occupied, or to be occupied by said lodger, or roomer or guest in such lodging house, rooming house, motel or hotel. Said register shall be kept in a conspicuous place in said lodging house, rooming house, motel or hotel, and shall at all times be open to inspection by any peace officer of the state of California. (1226-7/66, 2015-11/75)

3.28.070 Guests must register. Before any lodging for hire to any person(s) in any lodging house, or before renting any room to any person(s) in any rooming house, or before furnishing any accommodations to any guest(s) at any motel or hotel, the proprietor, manager or owner thereof shall require the person(s) to whom such lodgings are furnished, or room is rented, or accommodations furnished, to inscribe his/their name(s) in such register kept for that purpose as hereinabove provided, and shall set opposite said name(s) the time when said name(s) was/were

so inscribed, the room occupied by such lodger(s), roomer(s), or guest(s), and the license number and description of the vehicle said lodger(s), roomer(s) or guest(s) drove. (1226-7/66, 2015-11/75)

3.28.080 Registration. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Finance Director and obtain from him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following: (3751-11/06)

- (a) The name of the operator;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued.
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of Chapter 3.28 by registering with the Finance Director for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Treasurer. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit." (1068-7/64, 3751-11/06)

3.28.090 Reporting and remitting. Each operator shall file a report each month on forms provided by the Finance Director of the total rents charged and received and the amount of tax collected for transient occupancies for the preceding month. The full amount of tax collected shall be remitted to the City Treasurer. Said tax collected by each operator during a calendar month, is due and payable and must be received by the City by the last business day of the first month following and shall be delinquent and subject to the penalties noted in section 3.28.100 of this chapter on the first day of the second month following. Said report shall be filed at the same time the tax is remitted. Returns are due and payable and delinquent immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment is made to the City Treasurer. (1068-7/64, 2098-9/76, 3751-11/06)

3.28.100 Penalties and interest. The following shall give rise to penalties and interest:

- (a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the tax in addition to the amount of the tax.
- (b) Continued Delinquency. Any operator who fails to meet any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the 10 percent penalty first imposed.
- (c) Fraud. If the Finance Director determines that the non-payment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section. (3751-11/06)
- (d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half (1/2) of 1 percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (1068-7/64)

3.28.110 Failure to collect and report tax--Determination of tax by Finance Director. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Finance Director shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Finance Director shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Finance Director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Finance Director for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Finance Director shall become final and conclusive and immediately due and payable to the City Treasurer. If such application is made, the Finance Director shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Finance Director shall determine the proper tax to be remitted and shall thereafter give written notice to the person and in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable to the City Treasurer after fifteen (15) days unless an appeal is taken as provided in section 3.28.120. (1068-7/64, 2015-11/75, 3751-11/06)

3.28.120 Appeal. Any operator aggrieved by any decision of the Finance Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (1068-7/74, 2015-11/75, 3751-11/06)

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof to prevent or enjoin the collection of taxes sought to be collected pursuant to this chapter and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability. (3841-11/09)

3.28.130 Records. It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the Finance Director shall have the right to inspect at all reasonable times. (1068-7/64, 3751-11/06)

3.28.140 Refunds. The following shall warrant a refund:

- (a) Whenever the amount of any tax, has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City Treasurer under this Chapter, it may be refunded as provided in this Section. (3751-11/06)
- (b) The City Treasurer may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City Treasurer under this Chapter, provided that no refund shall be paid under the provisions of the Section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim,

under penalty of perjury, to the City Clerk within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of five thousand dollars (\$5,000), City Council approval shall be required. (3751-11/06)

- (c) It is the intent of the City that the one year written claim requirement of the Section be given retroactive effect; provided, however, that any claims which arose prior to the enactment of the one year claims period of this Section, and which are not otherwise barred by a then-applicable statute of limitations or claims procedure, must be filed with the City Clerk as provided in the subsection within ninety (90) days following the effective date of this Section. (3751-11/06)
- (d) The City Treasurer, or the City Council where the claim is in excess of five thousand dollars (\$5,000) and the City Treasurer has approved the claim, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the Treasurer/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the City Treasurer/City Council on the forty-fifth (45th) day. The Treasurer shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913. (1068-7/64, 2015-11/75, 3751-11/06)
- (e) The filing of a written claim is a prerequisite to any suit thereon. Any action brought against the City pursuant to the Section shall be subject to the provisions of Government Code Sections 945.6 and 946. (3751-11/06)

3.28.150 Actions to collect. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city of Huntington Beach for the recovery of such amount. (1068-7/64, 2015-11/75)

3.28.160 Failure to register. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Finance Director, or who renders a false or fraudulent return or claim, is guilty of a MISDEMEANOR. Any person required to make, render, sign or verify any report or claim or who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a MISDEMEANOR. (1068-7/64, 2015-11/75, 3751-11/06)

3.28.170 Credit for Transient Occupancy Taxes Paid to Huntington Beach Redevelopment Agency. Any person or persons subject to the transient occupancy tax under this Ordinance shall be entitled to a credit against the payment of such taxes due in the amount of any transient occupancy taxes due from that person or persons to the Huntington Beach Redevelopment Agency ("Agency") pursuant to Ordinance No. 2, adopted by the Agency on July 1, 2002, which affects any persons occupying a room or rooms in any hotels, inns, tourist homes or houses, motels, or other lodging within the Main-Pier Redevelopment sub-area of the Huntington Beach Redevelopment Project. (2974-12/88, 3558-7/02, 3559-7/02) (See Ordinance No. 3559 for additional information regarding termination, amendment or modification of §3.28.170.)